

§ 2200.96

(2) No visual aid shall introduce or rely upon facts or evidence not already part of the record.

(3) If visual aids or exhibits other than documents are to be used at the argument, counsel shall arrange with the Executive Secretary to have them placed in the hearing room on the date of the argument before the Commission convenes.

(4) Parties using visual aids not introduced into evidence shall have them removed from the hearing room unless the Commission directs otherwise. If such visual aids are not reclaimed by the party within a reasonable time after notice is given by the Executive Secretary, such visual aids shall be disposed of at the discretion of the Executive Secretary.

(i) *Recording oral argument.* (1) Unless the Commission directs otherwise, oral arguments shall be electronically recorded and made part of the record. Any other sound recording in the hearing room is prohibited. Upon leave of the Commission, any party, at its own expense, may arrange for a qualified court reporter to be present and to report and transcribe oral arguments. A copy of the transcript shall be provided to the Commission by the ordering party and shall be filed with the Executive Secretary.

(2) Persons desiring to listen to the recordings shall make appropriate arrangements with the Executive Secretary.

(j) *Failure to file brief.* A party who fails to file a brief shall not be heard at the time of oral argument except by permission of the Commission.

(k) *Participation in oral argument by amicus curiae.* (1) An amicus curiae will not be permitted to participate in oral argument without leave of the Commission upon proper motion.

(2) A motion by amicus curiae seeking leave to participate in oral argument shall be filed no later than 14 days prior to the date oral argument is scheduled.

(3) The motion of an amicus curiae for leave to participate at oral argument shall identify the interest of the applicant and shall state the reason(s) why its participation at oral argument is desirable.

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(4) Motions in opposition to the motion of an amicus curiae for leave to participate in the oral argument must be filed within 7 days of the date of the motion.

[55 FR 22783, June 4, 1990, as amended at 57 FR 41688, Sept. 11, 1992]

§ 2200.96 Commission receipt pursuant to 28 U.S.C. 2112(a)(1) of copies of petitions for judicial review of Commission orders when petitions for review are filed in two or more courts of appeals with respect to the same order.

The Commission officer and office designated to receive, pursuant to 28 U.S.C. 2112(a)(1), copies of petitions for review of Commission orders, from the persons instituting the review proceedings in a court of appeals, are the Executive Secretary and the Office of the Executive Secretary at the Commission's office, One Lafayette Centre, 1120-20th Street NW., 9th Floor, Washington, DC 20036-3419. Five copies of the petition shall be submitted pursuant to this section. Each copy shall state that it is being submitted to the Commission pursuant to 28 U.S.C. 2112 by the persons or person who filed the petition in the court of appeals and shall be stamped by the court with the date of filing.

NOTE: 28 U.S.C. 2112(a) contains certain applicable requirements.

[54 FR 18491, May 1, 1989, as amended at 58 FR 26065, Apr. 30, 1993]

Subpart G—Miscellaneous Provisions

§ 2200.100 Settlement.

(a) *Policy.* Settlement is permitted and encouraged by the Commission at any stage of the proceedings.

(b) *Requirements.* The Commission does not require that the parties include any particular language in a settlement agreement, but does require that the agreement specify the terms of settlement for each contested item, specify any contested item or issue that remains to be decided (if any remain), and state whether any affected employees who have elected party status have raised an objection to the reasonableness of any abatement time. Unless the settlement agreement

states otherwise, the withdrawal of a notice of contest, citation, notification of proposed penalty, or petition for modification of abatement period will be with prejudice.

(c) *Filing; service and notice.* A settlement submitted for approval after the Judge's report has been directed for review shall be filed with the Executive Secretary. When a settlement agreement is filed with the Judge or the Executive Secretary, proof of service shall be filed with the settlement agreement, showing service upon all parties and authorized employee representatives in the manner prescribed by § 2200.7(c) and the posting of notice to non-party affected employees in the manner prescribed by § 2200.7(g). The parties shall also file a final consent order for adoption by the Judge. If the time has not expired under these rules for electing party status, or if party status has been elected, an order terminating the litigation before the Commission because of the settlement shall not be issued until at least 10 days after service or posting to consider any affected employee's or authorized employee representative's objection to the reasonableness of any abatement time. The affected employee or authorized employee representative shall file any such objection within this time. If such objection is filed or stated in the settlement agreement, the Commission or the Judge shall provide an opportunity for the affected employees or authorized employee representative to be heard and present evidence on the objection, which shall be limited to the reasonableness of the abatement time.

(d) *Form of settlement document.* It is preferred that settlement documents be typewritten in conformance with § 2200.30(a). However, a settlement document that is hand-written or printed in ink and is legible shall be acceptable for filing.

[51 FR 32015, Sept. 8, 1986, as amended at 57 FR 41688, Sept. 11, 1992]

§ 2200.101 Settlement Judge procedure.

(a) *Appointment of Settlement Judge.* (1) This section applies only to notices of contests by employers and to applications for fees under the Equal Access to Justice Act and 29 CFR part 2204.

(2) Upon motion of any party following the filing of the pleadings (or notice of simplified proceedings), or otherwise with the consent of the parties at any time in the proceedings, the Chief Administrative Law Judge or the Chairman may assign a case to a Settlement Judge for processing under this section whenever it is determined that there is a reasonable prospect of substantial settlement with the assistance of mediation by a Settlement Judge. In the event either the Secretary or the employer objects to the use of a Settlement Judge procedure, such procedure shall not be imposed.

(3) The settlement negotiations under this section shall be for a period not to exceed 45 days.

(b) *Powers and duties of Settlement Judges.* (1) The Judge shall confer with the parties on subjects and issues of whole or partial settlement of the case.

(2) The Judge may allow or suspend discovery during the time of assignment.

(3) The Judge may suggest privately to each attorney or other representative of a party what concessions his or her client should consider, and assess privately with each attorney or other representative the reasonableness of the party's case or settlement position.

(4) The Judge shall seek resolution of as many of the issues in the case as is feasible.

(c) *Settlement conference and other communication—(1) Types of conferences.* In general it is expected that the Settlement Judge shall communicate with the parties by a conference telephone call. The Settlement Judge, however, may schedule a personal conference with the parties under one or more of the following circumstances:

(i) It is possible for the Settlement Judge to schedule in one day three or more cases for conference at or near the same location;

(ii) The offices of the attorneys or other representatives of the parties, as well as that of the Settlement Judge, are located in the same metropolitan area;

(iii) A conference may be scheduled in a place and on a day that the Judge is scheduled to preside in other proceedings under this part;